er's right. The doctrine seems to be deemed of some importance on the continent and has been fully worked out in relation to the rights of mortgagees, lessees, tenants in common and defrauded vendees. See La Grande Encyclopédie—Title Trésor.

Under the influence of the feudal system both in England and on the continent the title to treasure trove was held to vest in the lord of the soil. Bracton Bk. 3, T. 1, 2 Ch. IV; Grotius, Bk. 2 Ch. 8 § 7. On the continent (Bk. 2, Ch. 8 § 7) the Roman rule later came to prevail; but in Great Britain the right to treasure trove established itself as a prerogative of the king and as such it exists down to the present day. *Attorney General* v. *Trustees of British Museum* [1903] 2 Ch. 598. There is no decided case in this country recognizing that any of our commonwealths have succeeded to this prerogative right. The prevailing feeling seems to pronounce against it though the penal code of New York makes it a misdemeanor "to conceal or appropriate lost treasure belonging to the state by virtue of its sovereignty." 2 Kent Com. 358. It is still an open question therefore whether an individual in this country can retain treasure trove against the state. There has been, however, a radical statutory development on the subject of the disposition of lost property. American common law accords the possession of this to the finder, regardless of the place where it may be found. *Bowen* v. *Sullivan* (1878) 62 Ind. 281; *Durfee* v. *Jones* (1877) 11 R. I. 588. But the typical state code directs the finder to turn the article over to a local official under penalty of forfeiture of double value. If after advertisement no claimant proves within a year the owner's title is divested and goes in California, Missouri, Indiana and Montana to the finder; in Connecticut, Illinois, Iowa, New Hampshire and Vermont to the county, and in Maine, Massachusetts, Michigan, Oregon, Washington and Wisconsin one-half to the county and one-half to the finder. Such a statute being against common right will be strictly construed and has been held not to apply to property voluntarily hidden away. *Sovern* v. *Yoran* (1888) 16 Or. 269. Treasure trove then is not governed by these code provisions and in a state like Connecticut, lost goods may be claimed by the county while treasure trove may not be. In the principal case where the question was simply as to the right to the possession as between the parties, the distinction between property that has been lost and treasure trove is properly entitled to little weight. No Anglo-Saxon court would declare a division of the spoil, and the analogy of lost property is close enough to secure the finder in his possession. But were the issue to arise between the finder and the state the distinction might be pivotal. There is a solid distinction in legal logic and tradition between property in the two situations, an appreciation of which would furnish the finder of treasure trove in any jurisdiction with a defense to proceedings instituted by the state unless the court found that lost treasure under our political system is to be regarded as a part of the state revenue.

EQUITY JURISDICTION TO SPECIFICALLY PERFORM PAROL CONTRACTS IN RELATION TO LAND.—The Courts have based the jurisdiction which equity has assumed over certain parol contracts relating to land not-

withstanding the statute of frauds, upon two distinct grounds, (1) on the ground of part performance where the plaintiff has gone into possession of the land which is the subject matter of the contract and (2) on the ground of fraud where the plaintiff has irrevocably changed his position in reliance on the contract. The fourth section of the Statute of Frauds was originally interpreted as not applying to contracts partly executed, and, therefore, equity would on the ground of part performance enforce a contract where either the purchase price had been paid or possession given. *Lacon* v. *Mertius* (1743) 3 Atk. 1. With the subsequent abandonment of this interpretation, the doctrine of part performance should have been discarded, and this was the result as to the effect of payment of the purchase-price. *Clinan* v. *Cooke* (1802) 1 Sch. & Lef. 22. But where possession was taken equity has almost everywhere continued to enforce the contract. This was justified sometimes on the ground of fraud, in that the vendee would otherwise be liable as a trespasser, forgetting that the contract being merely unenforceable not void could be used as a defence to such an action. *Allen's Estate* (Pa. 1841) 1 Watts & S. 386. More usually it is said that the taking of possession is an act of part performance—and the only such act—unequivocally referrable to the contract. *Humphrey* v. *Green* (1882) L. R. 10 Q. B. 148. But clearly the possession is not in the nature of things solely referrable to the alleged contract or indeed to any contract at all. At the most it merely suggests a part performance of some agreement relating to the land. In effect a new clause has been added to the Statute of Frauds.

The second ground of relief, however, grew out of sound principles of equity. Ordinarily the refusal to give specific performance of parol contracts within the Statute of Frauds worked no further hardship than that incident to depriving the plaintiff of the expected benefits of the contract. If he had paid the purchase price or rendered services in payment he might recover in quasi-contract. But where the plaintiff had irrevocably changed his position in reliance on the promise to convey land as by discontinuing a suit or making improvements on the land there was a clear case of hardship. No legal remedy being available equity came in the United States to take jurisdiction on the ground of constructive fraud. Its sole purpose being to make the plaintiff whole, the agreement then should only be specifically enforced when the doing of substantial justice requires it, that is where as a matter of fact there has been an irrevocable change of position in return for which the thing promised is the only adequate remedy. *Slingerland* v. *Slingerland* (1888) 39 Minn. 197; *Farwell* v. *Johnston* (1876) 34 Mich. 342; *Daniels* v. *Lewis* (1862) 16 Miss. 146; *Hancock* v. *Mellon* (1898) 187 Pa. St. 371. If the promise is enforced in any other case, the court is departing from the ostensible and proper ground of constructive fraud. That this hardship or fraud is the basis of the jurisdiction in this group of cases is shown by the fact that the American courts have generally given the same relief where the plaintiff has irrevocably changed his position but has given no legal consideration for the defendant's promise. *Freeman* v. *Freeman* (1870) 43 N. Y. 34; *Neale* v. *Neales* (1869) 9 Wall. 1; *Nimo* v. *Sockett* (1861) 33 Ga. 9.

Some American courts require the presence of both possession

and irrevocable change of position. It seems as if in adopting the English rule as to possession, they had realized its anomalous character and sought to justify it by engrafting upon it the sound principle which underlies the second rule. It is obvious that these rules have nothing in common which logically calls for their combination. The jurisdictions so combining them have greatly increased the uncertainty and confusion which marks this entire branch of equity. Instead of granting relief only in those cases where the agreement would be specifically enforced under either of the original rules, there is a tendency to relax the requirements of both thus taking cognizance of cases which would not properly fall under either. This tendency is well shown by a recent New Jersey case, *Winfield* v. *Bowen* (N. J. 1903) 56 Atl. 728, in which the court decreed the specific performance of an oral agreement to devise a certain house and lot, the plaintiff having occupied the premises with the testator and given her services for a long period of years as the consideration on which the promises was based. In accord are *Warren* v. *Warren* (1883) 105 Ill. 568; *Taft* v. *Taft* (1889) 73 Mich. 502; *Carney* v. *Carney* (1888) 95 Mo. 353; *Vreeland* v. *Vreeland* (1895) 53 N. J. Eq. 387. As has already been pointed out payment of the purchase price, whether it be in money or services is not sufficient under either the first or second rule and such is still the weight of authority where both elements are required. *Edwards* v. *Estell* (1874) 48 Cal. 194; *Grant* v. *Grant* (1893) 63 Conn. 530; *Gorham* v. *Dodge* (1887) 122 Ill. 528; *Johns* v. *Johns* (1879) 67 Ind. 440; *Wallace* v. *Long* (1885) 105 Ind. 522; *Ham* v. *Goodrich* (1856) 33 N. H. 32; *Baldwin* v. *Squier* (1884) 31 Kan. 283; *Russell* v. *Briggs* (1901) 165 N. Y. 500. Nor was the possession of the plaintiff sufficient under the requirement of the English rule that it be notorious and exclusive. *Gregory* v. *Mighell* (1811) 18 Ves. Jr. 328; *Frame* v. *Dawson* (1807) 14 Ves. 386; *Allen's Estate* (Pa. 1841) 1 Watts & S. 383.

INTRA-STATE RAILROAD CAB SERVICE AS A PART OF INTERSTATE COMMERCE.—The present tendency of the Supreme Court of the United States to restrict the application of the "commerce clause" of the Federal Constitution where the power of taxation of the States is involved is illustrated by a recent case before that tribunal. The Pennsylvania Railroad had established a cab service in New York City for the sole use of its patrons in getting to and from its ferry station before or after its passage across the New Jersey line. The service was conducted at a loss, and merely for the convenience of passengers. The court held that it was not protected from State taxation by the commerce clause. *New York* ex rel. *Penna. R. R. Co.* v. *Knight* (1904) 192 U. S. 21. It is well settled that "commerce among the States" as that term is used in the Constitution includes not only interchange of commodities, but the transportation of passengers as well. *Gibbons* v. *Ogden* (1824) 9 Wheat. 1. Nor is it restricted to the bare crossing of a state line by goods or passengers. The necessary means of effecting such crossing, or a single continuous carriage between points in different states, is included.